

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

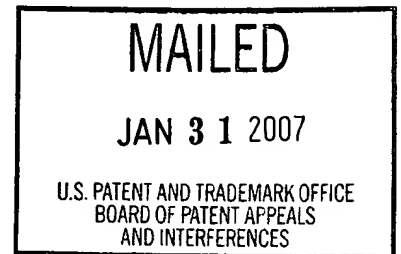
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES J. JACOBUS

Appeal No. 2006-2763
Application No. 09/785,385

HEARD: DECEMBER 12, 2006



Before HAIRSTON, DIXON, and SAADAT, *Administrative Patent Judges*.
SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-23, which are all of the claims pending in this application.

We affirm.

BACKGROUND

Appellant's invention is directed to packetized communications through a multicast cloud in a distributed environment. According to Appellant, network routing systems distribute messages based on normal packet routing behavior as well as their content (Specification 9). An understanding of the invention can be derived from a reading of exemplary independent claim 1, which is reproduced as follows:

1. A distributed network computing environment, comprising:

a plurality of clients communicating within a multicast cloud using content-specific messages to implement a groupware application; and

one or more network routing modules or router-embedded applets operative to distribute the messages based upon the content in addition to normal packet-routing.

The Examiner relies on the following prior art references:

Waters	US 5,841,980	Nov. 24, 1998
Lambright	US 6,015,348	Jan. 18, 2000
DeSimone	US 6,138,144	Oct. 24, 2000

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The claim rejections under appeal are:

Claims 1 and 3-6 stand rejected under 35 U.S.C. § 102(e) as being anticipated by DeSimone.

Claims 7-9, 11 and 14-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DeSimone and Waters.

Claims 2, 10, 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DeSimone, Waters and Lambright.

Rather than reiterate the opposing arguments, we refer to the Brief (filed October 13, 2005) and the Answer (mailed January 13, 2006) for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the brief have not been considered (37 C.F.R. § 41.37(c)(1)(vii)).

OPINION

Regarding the 35 U.S.C. § 102 rejection of the claims, the focus of Appellant's contention is that DeSimone identifies destinations only by address instead of by message content type and thus, cannot anticipate the subject matter of

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claim 1 (Br. 3). The Examiner argues that DeSimone teaches distributing messages based on their media types (DeSimone, col. 5, ll. 24-41) which is the same as distribution based on the content (Answer 11).

A rejection for anticipation requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. *See Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946-47 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), it is only necessary for the claims to “‘read on’ something disclosed in the prior art reference, i.e., all limitations of the claim are found in the reference, or ‘fully met’ by it.” *See also Atlas Powder Co. v. IRECO Inc.*, 190 F.3d at 1346, 51 USPQ2d at 1945 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781, 227 USPQ 773, 778 (Fed. Cir. 1985)).

In determining the subject matter encompassed by claim 1, we agree with the Examiner that the claim merely requires “to distribute the messages based upon the content” without specifying codes or any multicast receive address list. We also remain unconvinced by Appellant’s argument (Br. 3-4 and oral hearing) that sending messages based on the media type may be distinguished over the prior art which sends the messages based on the content since the content relates to and is determined according to the type of media selected. In that regard, we find that the multicast capable IP routers in DeSimone distribute the messages to the clients based on the media type (DeSimone, col. 5, ll. 24-41), which actually determines the content.

We also note that all claim 1 requires is that the network routers distribute the messages based upon the content, not that routers use specific code or logic, as Appellant would have urged us to believe (Br. 3). Claims will be given their broadest reasonable interpretation consistent with the specification, and limitation appearing in the specification are not to be read into the claims. *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985). Therefore, considering the broadest claim interpretation, the type of logic or code used by the routers is irrelevant to the recited distribution of messages “based upon the content.” In other

words, the media types of DeSimone are the same as the claimed “content” since the type of media determines what is in the messages to be sent. Accordingly, the 35 U.S.C. § 102(e) rejection of claim 1, as well as claims 3-6 argued together with claim 1 as one group, over DeSimone is sustained.

Turning now to the 35 U.S.C. § 103 rejection of claims 7-9, 11 and 14-23, we will determine whether the Examiner has properly combined DeSimone and Waters. Appellant argues that there is no suggestion for combining the references where the computer gaming of Waters is non-analogous to the multicast multimedia of DeSimone (Br. 4). Additionally, Appellant asserts that even if the references are combined, no game and game developer specific “culling rules” are taught (Br. 5).

We agree with the Examiner (Answer 13-14) that the multi-user network of Waters is a distributed network which transmits only relevant data applicable to each participant (Waters; abstract; col. 9, ll. 59-63). Waters also suggests optimizing interaction among multi-users when using bandwidth resources is optimized (Waters, col. 4, l. 65 through col. 5, l. 3). We also find that Appellant’s claim 11, as argued by the Examiner (Answer 15), does not include the specific definition of “culling rules,” as argued by Appellant (Br. 5). Based on these teachings and suggestions and Appellant’s own recognition of Waters using culling

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rules based on proximity in the virtual space (Specification 7:19-20), we find the Examiner's position to be reasonable and sufficient to support a prima facie case of obviousness. Therefore, the 35 U.S.C. § 103 rejection of claims 7-9, 11 and 14-23 over DeSimone and Waters is sustained.

Finally, turning to the rejection of claims 2, 10, 12 and 13, we agree with the Examiner (Answer 15-16) and find that the claims do not recite any features related to using fixed zones. Therefore, based on the weight of arguments presented by Appellant (Br. 5) and the Examiner's response, we sustain the 35 U.S.C. § 103 rejection of claims 2, 10, 12 and 13 over DeSimone, Waters and Lambright.

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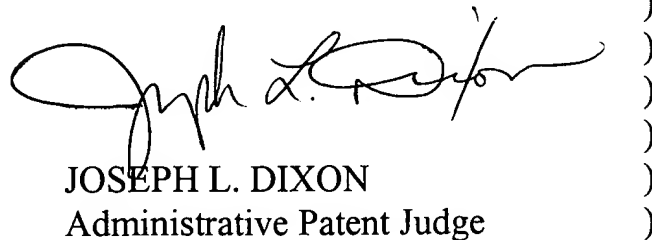
CONCLUSION

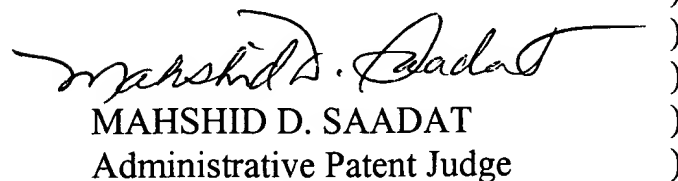
In view of the foregoing, the decision of the Examiner rejecting claims 1 and 3-6 under 35 U.S.C. § 102 and claims 2 and 7-23 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED


KENNETH W. HAIRSTON
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge


MAHSHID D. SAADAT
Administrative Patent Judge

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